

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X

BEHZADI & BRENJIAN CARPET  
Plaintiff,

**AFFIDAVIT IN OPPOSITION  
TO JUDGMENT BY DEFAULT**

-against-

Docket No. 07-CV-7073

**Judge/Magistrate Judge:** Barbara S. Jones/Douglas F. Eaton

**Date:** October 31, 2007

DAVID & SON ORIENTAL ANTIQUE  
RUGS CORPORATION AND  
DAVID SHADAN

Defendant(s).

-----X

James J. Corbett duly sworn deposes and says:

1. I am the attorney for defendants, David & Son Oriental Antique Rugs Corporation ("David & Son") and David Shadan ("Shadan"), and as such I am fully familiar with the facts and circumstances set forth herein. I am admitted to practice law before this Court.
2. I make this affidavit in opposition to plaintiff's Affidavit for Judgment by Default.
3. The Court should not enter a default judgment against defendants because service of the Summons and Complaint was not properly effectuated upon the defendant, David Shadan, and defendants shall be filing a formal Motion to Vacate the Certificate of Default in this action. It is anticipated that defendants' Motion to Vacate the Certificate of Default shall be filed by the end of the day on November 2, 2007.
4. It is respectfully submitted that the interests of justice would be best served if the Court decided defendants' Motion to Vacate the Certificate of Default before it decides whether to enter a default judgment.

5. Within the formal motion defendants shall show good cause for setting aside the Certificate of Default pursuant to Federal Rule of Civil Procedure 55(c).

6. In this action, plaintiff, a citizen of Iran that maintains its principal place of business in Tehran, Iran, is seeking a default judgment in excess of \$700,000.00.

7. At paragraph 6 of the Affidavit of Kevin Fritz, Esq. for Judgment of Default, plaintiff admits that the defendant, David Shadan, was served with the Summons and Complaint by certified mail. This is clearly improper service upon a natural person and therefore plaintiff is not entitled to a default judgment against David Shadan.

8. With regard to the corporate defendant, David & Son Oriental Antique Rugs Corporation ("Antique Rugs"), on or before November 2, 2007, defendants shall file a formal Motion to Vacate the Certificate of Default in this action. Within that motion defendants shall set forth good cause for vacating the Certificate of Default and set forth grounds for dismissal based on jurisdiction and forum non conveniens.

9. Defendants retained my office on October 22, 2007 and on that date my office immediately filed a Notice of Appearance.

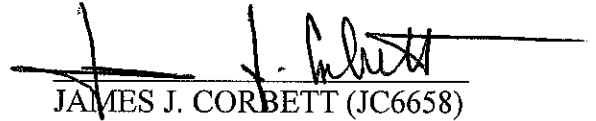
10. Also on October 22, 2007, I reviewed the docket and became aware that plaintiff filed an Application for Certificate of Default.

11. Therefore, on October 22, 2007 I called plaintiff's attorneys' office and spoke with Kevin Fritz, Esq. and requested that plaintiff withdraw its application for default judgment and provide defendants with an extension of time to answer.

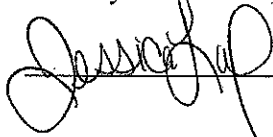
12. Mr. Fritz stated that he would have to speak with his client before he could provide a response to my request. Thereafter, on October 23, 2007, I called Mr. Fritz and he indicated that he had not been able to speak with his client because his client resides in Tehran, Iran.

13. Thereafter, Mr. Fritz informed me that his client is unwilling to withdraw its default application and extend defendants' time to answer.

14. Accordingly, it is respectfully submitted that plaintiff's application for a default judgment against defendant, Shadan, should be denied because plaintiff admits defendant, Shadan, was not properly served, and the Court should not decide plaintiff's application for a default judgment until the Court decides defendants' Motion to Vacate the Default Certificate.

  
JAMES J. CORBETT (JC6658)

Sworn to before me this  
31<sup>st</sup> day of October, 2007



JESSICA LANG  
Notary Public, State of New York  
No. 01LA6151998  
Qualified in Suffolk County  
Commission Expires August 28, 20 10